

EXHIBIT 4

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 ORACLE AMERICA, INC.,)
5 Plaintiff)
6)
7 VS.)
8) NO. CV 10-03561 WHA
9 GOOGLE, INC.,)
10 Defendant) VOLUME:I
11)
12)

13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
PAGES: 1 - 292

Page 1

1 A. So it was about a year earlier. 01:20:50
2 Q. Correct. 01:20:52
3 MR. HOLTZMAN: I'll ask the court 01:21:33
4 reporter to mark as Exhibit 147. 01:21:34
5 (E-mail marked 01:22:05
6 Exhibit 147.) 01:22:08
7 Q. What is this document? 01:22:10
8 A. I don't know. I don't write the clearest 01:22:20
9 e-mails. I'm not even sure what I was 01:22:38
10 trying to say. It looks like it is a draft 01:22:40
11 of an e-mail that Andy was going to send to 01:22:54
12 Deep that answered some questions maybe 01:23:00
13 that Eric had, but -- 01:23:01
14 Q. Andy sent that e-mail, the draft e-mail to 01:23:04
15 you, is that correct? 01:23:06
16 A. I can't tell. I mean, so it looks like I'm 01:23:07
17 responding to Andy, and it looks like I'm 01:23:12
18 responding to a draft e-mail, but I don't 01:23:14
19 see a forward of a message from Andy, so 01:23:16
20 I'm not sure, but from my wording it looks 01:23:18
21 like he had asked me to comment on an 01:23:21
22 e-mail and receiving feedback on that. 01:23:23
23 Q. Okay. Let me ask first about Andy's draft 01:23:28
24 message, assuming that's what it is. 01:23:32
25 There's -- on the first page there's a 01:23:36

1	point number one. I'm sorry, before that	01:23:39
2	it says, "Here are the Android team	01:23:41
3	responses to Eric's questions." And do you	01:23:45
4	have any understanding as to who Eric is in	01:23:48
5	that?	01:23:50
6	A. I assume it's Eric Schmidt.	01:23:51
7	Q. Number one is "Are we missing anything from	01:23:53
8	the basic strategy of search, apps, and	01:23:56
9	monetization?" What did you understand	01:24:00
10	this "basic strategy" to be?	01:24:04
11	A. I'm still not sure if this is a question	01:24:08
12	about -- I don't know what it's a question	01:24:11
13	about. It looks like -- I'm trying to	01:24:16
14	figure out if it's -- I'm assuming it is	01:24:18
15	either a question about Google's mobile	01:24:20
16	strategy, in general, and Eric asking	01:24:23
17	questions of that or Eric asking questions	01:24:26
18	relative to Android, and I don't know.	01:24:31
19	I imagine at this point in time	01:24:34
20	given that Eric -- this is right after the	01:24:36
21	acquisition less than six months. Eric	01:24:38
22	wasn't that -- there wasn't that much to	01:24:41
23	Android yet. Eric wasn't that clued in on	01:24:43
24	it. I suspect Deep might have been looking	01:24:46
25	for Andy's feedback on our thoughts on the	01:24:48

1 overall mobile strategy, but I can't be 01:24:51
2 sure here. 01:24:58
3 Q. Do you have any understanding as to what is 01:24:59
4 meant here by "basic strategy of search, 01:24:59
5 apps, and monetization," generally? 01:25:01
6 A. No. Again, I guess I don't. I think 01:25:03
7 relative to mobile, you know, if someone is 01:25:06
8 asking us for input, I'm assuming it's 01:25:09
9 relative to mobile or Android and, again, I 01:25:11
10 don't know, but I -- so, okay. Well, 01:25:14
11 judging by question two, which is a 01:25:21
12 question specifically about Android, then 01:25:24
13 I'm assuming that this list is more 01:25:25
14 generally generic questions that Eric had 01:25:27
15 of mobile, in general, of Deep. 01:25:29
16 Q. Do you have any understanding as to -- in 01:25:33
17 the context of mobile, generally, what is 01:25:35
18 meant by "the basic strategy of search, 01:25:38
19 apps, and monetization?" 01:25:41
20 A. Well, I assume it means how well Google's 01:25:42
21 search is executed in mobile environments, 01:25:49
22 how good a job we do with our applications 01:25:52
23 within a mobile environment, and if there's 01:25:56
24 thoughts as to how, at some point, we might 01:25:59
25 start to make money for mobile, but I 01:26:02

1	really don't know.	01:26:06
2	Q. That's fine. On the second page there's a	01:26:07
3	heading that says, "Revenue from	01:26:16
4	Advertisers not users." Do you see that?	01:26:17
5	A. Ah-hah.	01:26:20
6	Q. Right under that it says, "For the reasons	01:26:21
7	stated above it is key to get strong	01:26:24
8	carrier support. While our technical	01:26:26
9	leadership in search should be a huge	01:26:29
10	advantage, it is considered a threat by	01:26:31
11	many of the carriers. The quickest way to	01:26:33
12	defuse this issue is to accelerate the	01:26:37
13	advertising marketplace concept with	01:26:39
14	contractual partnerships with carriers	01:26:40
15	based on rev-share."	01:26:43
16	What's your understanding, if any,	01:26:46
17	as to what's meant here by "our technical	01:26:48
18	leadership in search should be a huge	01:26:50
19	advantage?"	01:26:54
20	A. I don't -- again, I'm not exactly sure from	01:26:55
21	the context of this we were -- I didn't	01:27:04
22	author this, but, so, I guess I don't know.	01:27:09
23	Q. Let me just ask about the last part of what	01:27:12
24	I read which, again, is "The quickest way	01:27:20
25	to defuse this issue is to accelerate the	01:27:22

1	advertising marketplace concept with	01:27:25
2	contractual partnerships with carriers	01:27:27
3	based on rev-share." Did you have an	01:27:29
4	understanding as to whether that's specific	01:27:32
5	to Android or mobile more generally?	01:27:34
6	A. Oh, yeah, I wouldn't say this is not	01:27:37
7	specific to Android. This is just getting	01:27:39
8	Google search in handsets and getting	01:27:41
9	carriers to work with us to get Google	01:27:44
10	search in handsets.	01:27:46
11	Q. Is that something that applies to Android?	01:27:48
12	A. At this point in time, again, we were so	01:27:49
13	far away from having Android handsets, I	01:27:54
14	just don't think it was that relevant to a	01:27:56
15	specific operational question.	01:27:58
16	Q. I'm going to point to number two further	01:28:00
17	down on the second page. It says, "Open	01:28:07
18	source handset solution (aka Android) is	01:28:09
19	some ways away. What can we do in the	01:28:14
20	meantime? Should we consider launching and	01:28:16
21	MVNO (from Larry)? Other?"	01:28:20
22	Was there a desire at this time,	01:28:24
23	October 2005, to do something in the mobile	01:28:31
24	space right away?	01:28:34
25	A. I think Google was -- there were different	01:28:36

1 people in Google who were interested in 01:28:40
2 delivering as complete a Google experience 01:28:42
3 on a mobile phone as possible, and there 01:28:43
4 were different ways to do that. 01:28:45
5 Q. A little below that it says, "It is widely 01:29:06
6 believed by that if an open platform is not 01:29:10
7 introduced in the next few years then 01:29:13
8 Microsoft will own the programmable handset 01:29:15
9 platform." 01:29:18
10 Was the possibility of Microsoft 01:29:19
11 owning the platform a concern that you 01:29:22
12 shared? 01:29:26
13 A. Yes. As I articulated before, I had direct 01:29:27
14 experience at Orange that carriers didn't 01:29:31
15 like Microsoft's control over platform. 01:29:33
16 And there's the analogy to the browser 01:29:35
17 where Google was investing a lot in Firefox 01:29:37
18 to help be a more open browser that 01:29:41
19 everyone could use. 01:29:44
20 Q. Going to the third page, third paragraph 01:29:50
21 down it says, "What was being asked by the 01:30:00
22 executive team is what can we do between 01:30:02
23 now and a two-year time horizon. There are 01:30:04
24 two solutions: 1, Accelerate the delivery 01:30:08
25 of true Google handset experience based on 01:30:12

1	Android; 2, Deliver an interim Google	01:30:14
2	application handset based on an existing	01:30:16
3	platform with a collection of Google	01:30:18
4	applications - would need to be done in six	01:30:20
5	months time."	01:30:24
6	So in looking at the second one of	01:30:27
7	those, number two, in your view at the time	01:30:29
8	was that a desirable option?	01:30:35
9	A. I don't remember what my position would	01:30:39
10	have been at the time.	01:30:43
11	Q. You -- in the e-mail from you on the first	01:30:43
12	page of this document you wrote, "I am just	01:30:50
13	wondering if we should be using the term	01:30:56
14	1-2 years and telling people if they stop	01:30:58
15	trying to do two things and help us decide	01:31:02
16	how to ship sooner than their are solutions	01:31:04
17	(like acquisitions) that can get our	01:31:07
18	delivery in shorter."	01:31:10
19	Did that comment relate to the two	01:31:13
20	options I read in the third page?	01:31:15
21	A. Well, the quote that I have isn't the	01:31:18
22	quote -- isn't a quote from there, but so	01:31:27
23	it's not clear to me. But, yes, I mean,	01:31:30
24	look, I was on the Android team, so I would	01:31:33
25	have -- it's not -- again, I don't know	01:31:35

1 did look at other options. 01:38:49
2 Q. But again, you're not aware of any as you 01:38:51
3 sit here today? 01:38:54
4 A. I'm not aware of any other option. 01:38:54
5 MR. HOLTZMAN: I'll ask the court 01:39:29
6 reporter to mark as the next two exhibits 01:39:30
7 Oracle Exhibit 148 and Oracle 149. 01:39:32
8 Q. Actually if it's okay with you, consider 01:39:55
9 these one exhibit. They're consecutive 01:39:57
10 production numbers, and I think one is the 01:40:00
11 attachment to the other, if we can proceed 01:40:01
12 on that understanding. 01:40:04
13 So these would both be -- and I 01:40:05
14 will read the document production numbers. 01:40:07
15 Exhibit 148. That is the e-mail and the 01:40:10
16 attachment. Exhibit 148 bears production 01:40:14
17 numbers Google-14-00042243 through 42254? 01:40:25
18 MR. BABER: Off the record. 01:41:09
19 (Discussion off the record) 01:41:23
20 (Presentation marked
21 Exhibit 148.) 01:41:26
22 Q. What is this document? 01:41:26
23 A. I'm not exactly sure. I mean, it looks 01:41:41
24 like it's a presentation to a finance group 01:41:44
25 inside of Google, at least in a potential 01:41:47

1	deal with Sun. I don't know if that's what	01:42:05
2	the entirety of the document is, but maybe	01:42:07
3	it is just Sun. So, yes, it looks like	01:42:09
4	it's discussing a potential deal with Sun.	01:42:13
5	Q. So this was a potential deal between Google	01:42:15
6	and Sun?	01:42:21
7	A. Ah-hah.	01:42:22
8	Q. And in the first page of Exhibit 148	01:42:23
9	Mr. Rubin sent the attachment to you and	01:42:29
10	Mr. Lindholm, Mr. DiBona, and Mr. Lee, is	01:42:35
11	that correct?	01:42:39
12	A. Ah-hah.	01:42:39
13	Q. On January 31st, 2006, is that correct?	01:42:40
14	A. Correct.	01:42:44
15	Q. Let me ask as we go through the names	01:42:45
16	again, who is Mr. Lindholm?	01:42:47
17	A. I don't remember what Tim did specifically.	01:42:49
18	I think he had been at Sun and knew	01:42:52
19	something about Sun, but I don't remember	01:42:55
20	the specifics.	01:42:56
21	Q. And who is Mr. DiBona?	01:42:57
22	A. He was largely responsible for open source	01:42:59
23	initiatives inside Google.	01:43:03
24	Q. Going beyond Android?	01:43:06
25	A. Yes.	01:43:08

1	Q. Who is Mr. Lee?	01:43:09
2	A. I don't remember.	01:43:10
3	Q. Mr. Rubin's e-mail says, "FMG deal review	01:43:10
4	enclosed." Do you know what FMG refers to?	01:43:18
5	A. No, but the next sentence attempts to	01:43:21
6	define it by saying "FMG is finance."	01:43:23
7	People involved in making financial	01:43:28
8	signoff.	01:43:30
9	Q. And then he says after that, "We then go to	01:43:30
10	EMG." Do you know what EMG is?	01:43:33
11	A. The name at the time for the executive	01:43:36
12	management team.	01:43:38
13	Q. Is that top management at Google?	01:43:41
14	A. Ah-hah.	01:43:44
15	Q. Is that yes?	01:43:45
16	A. Yes.	01:43:46
17	Q. Do you have any recollection as to whether	01:43:46
18	the proposal, as embodied in Exhibit 148,	01:43:49
19	was approved by the finance group?	01:43:53
20	A. I do not.	01:43:56
21	Q. Do you have any recollection as to whether	01:43:57
22	it went to the executive management group?	01:44:02
23	A. I do not.	01:44:04
24	Q. If you could turn to page three of the	01:44:05
25	presentation which is the page marked with	01:44:12

1	the document production number ending in	01:44:16
2	246.	01:44:23
3	A. I am there.	01:44:24
4	Q. The title on this one is "Partner Overview	01:44:25
5	- Sun Microsystems." And on the two boxes,	01:44:28
6	the right-hand box says, "Why do the deal?"	01:44:34
7	So first, what's the "deal" referring to	01:44:36
8	here?	01:44:39
9	A. Yes. I guess I don't know specifically	01:44:42
10	what "the deal" is.	01:44:46
11	Q. But in the context, it's a deal between	01:44:47
12	Google and Sun?	01:44:49
13	A. Yes, it's a deal between Google and Sun	01:44:50
14	that's being contemplated.	01:44:53
15	Q. Under the heading, "Why do the deal," there	01:44:54
16	are a series of bullet points. The first	01:44:57
17	bullet point says, "Critical to our open	01:45:00
18	source handset strategy." So why, if you	01:45:03
19	know, did Google view the deal with Sun --	01:45:06
20	or strike that. Why did the Android team	01:45:15
21	view the deal with Sun as critical to the	01:45:17
22	open source handset strategy?	01:45:20
23	A. I'm not sure. I mean, I think -- I	01:45:22
24	shouldn't think. Yes, I guess I'm not --	01:45:28
25	since I don't think it was critical, I'm	01:45:37

1 not sure why at that time we would have 01:45:39
2 thought it was critical. I can believe it 01:45:40
3 would have accelerated our schedule. That 01:45:51
4 might have made it critical. 01:45:54

5 Q. Well, that's the second bullet point that 01:45:54
6 says, "Dramatically accelerates our 01:45:56
7 schedule." I'll get to that in a second, 01:45:58
8 but I wanted to get a sense if you have 01:46:00
9 any understanding as to why, apart from the 01:46:02
10 separate bullet point, doing a deal with 01:46:03
11 Sun was critical to Google's open source 01:46:06
12 handset strategy? 01:46:08

13 A. Yes, I don't -- again, I don't believe that 01:46:10
14 it was. So I don't know why we were saying 01:46:12
15 that here at the time and what the context 01:46:14
16 was that would make us say that. 01:46:17

17 Q. But you agree that the document does say 01:46:18
18 that?

19 A. The document does say that. 01:46:22

20 Q. Okay. Now going to the second bullet which 01:46:23
21 is "Dramatically accelerates our schedule," 01:46:29
22 why would the deal with Sun dramatically 01:46:31
23 accelerate your schedule? 01:46:35

24 A. Well, if you're buying something versus 01:46:37
25 building something, I assume buying 01:46:39

1	something that's complete versus taking the	01:46:42
2	time to build it or to build something that	01:46:44
3	would have to replace what it could do for	01:46:47
4	you could accelerate your schedule.	01:46:50
5	Q. So that's what I was going to ask. Where	01:46:53
6	it says, "Dramatically accelerate our	01:46:57
7	schedule," compared to what?	01:46:58
8	A. Compared to coming up with your own	01:46:59
9	solution to deliver whatever the desired	01:47:00
10	functionality was that you would have been	01:47:03
11	buying or licensing.	01:47:04
12	Q. The third bullet point under "Why do the	01:47:09
13	deal," states: "Form an industry alliance	01:47:11
14	to block Microsoft." Why was blocking	01:47:13
15	Microsoft significant?	01:47:19
16	A. Again, I don't know. I don't remember that	01:47:22
17	ever being a fixation by us as much as we	01:47:26
18	wanted to have Android, sort of, succeed as	01:47:30
19	being a clear leader in terms of mobile	01:47:35
20	handset platforms and you either -- that's	01:47:37
21	always some combination of getting out	01:47:43
22	there with your own solution, having your	01:47:47
23	solution be better and inhibiting others	01:47:49
24	from getting marketshare.	01:47:51
25	Q. The last bullet point reads: "Create value	01:47:54

1 for wireless stakeholders." What does that 01:48:01
2 mean in the context of why do a deal with 01:48:03
3 Sun? 01:48:07
4 A. I don't know. 01:48:08
5 Q. Who is the author of this presentation, do 01:48:10
6 you know? 01:48:18
7 A. I assume it was Andy. It says Andy on the 01:48:21
8 Android team, but I assume it was Andy, 01:48:27
9 though others, including myself, might have 01:48:30
10 been put on it -- have been put on. 01:48:32
11 Q. So just so we're clear, the heading -- the 01:48:33
12 title page of the presentation which is the 01:48:36
13 document, the page with the production 01:48:39
14 number ending 244 reads: "Open Handset 01:48:42
15 Alliance," and the authors are stated as 01:48:48
16 "Andy Rubin and Android team," correct? 01:48:53
17 A. Ah-hah. 01:48:55
18 Q. Yes? 01:48:56
19 A. Correct. 01:48:56
20 Q. If you could turn to page ten of the 01:48:56
21 presentation, production number ending in 01:49:05
22 253. This page is titled "Financial 01:49:13
23 Compensation." 01:49:24
24 A. Ah-hah. 01:49:24
25 Q. Were you involved in any discussions with 01:49:25

I, Teresa E. Costello, Notary
Public in and for the Commonwealth of
Massachusetts, do hereby certify that there
came before me on the 26th day of May,
2011, RICHARD MINER, who was duly sworn by
me; that the ensuing examination upon oath
of the said deponent was reported
stenographically by me and transcribed into
typewriting under my direction and control;
and that the within transcript is a true
record of the questions asked and answers
given at said deposition.

I FURTHER CERTIFY that I am
neither attorney nor counsel for, nor
related to or employed by any of the
parties to the action in which this
deposition is taken; and, further, that I
am not a relative or employee of any
attorney or financially interested in the
outcome of the action.

IN WITNESS WHEREOF I have hereunto
set my hand and affixed my seal of office
this 30th day of May, 2011, at Boston,
Massachusetts.



Teresa E. Costello, RPR, CRR,
CSR, #1452S98
Notary Public
Commonwealth of Massachusetts
My Commission
Expires: 5/13/16

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